

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	Case No: B-19-80731 C-13D
)	
REINA VIZOZO-MEJIA,)	
)	
Debtor.)	
)	
RICHARD M. HUTSON, II, Trustee)	
)	
<u>Plaintiff</u>)	
)	
v.)	
)	
CARVANA, LLC,)	
)	
<u>Defendant</u>)	

COMPLAINT TO AVOID POST-PETITION TRANSACTION

NOW COMES Richard M. Hutson, II, Standing Trustee ("Plaintiff") complaining of the Defendant, CARVANA, LLC ("Defendant"), and alleges and says:

JURISDICTION AND VENUE

1. This Court has proper and personal jurisdiction over the subject matter hereof and the parties hereto pursuant to 28 U.S.C. §§151, 157 and 1334, and Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina.
2. Venue is proper in this District pursuant to 28 U.S.C. §1409 in that this is an action arising in or related to a proceeding arising under Title 11 of the United States Code which is pending in this District, and this is a core proceeding within 28 U.S.C. §157.

PARTIES

3. On September 30, 2019, Reina Vizozo-Mejia (“the Debtor”) filed a voluntary petition under Chapter 13 of Title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of North Carolina (“the petition date”).

4. The Plaintiff, Richard M. Hutson, II, was appointed as Trustee for the Debtor on September 30, 2019, and is duly qualified and acting as Trustee.

5. The Defendant is a limited liability company doing business in North Carolina and has filed a claim in this case (Court Claim #5).

CLAIM FOR RELIEF

6. On or about September 11, 2019, the Debtor entered into a loan with Defendant in the principal amount of \$14,849.00 for the purchase of a 2014 Chevrolet Cruze (“the automobile”). A copy of the Retail Purchase Agreement is attached as “Exhibit A” and incorporated herein.

7. The registration and other documents necessary to perfect the lien in favor of Defendant were delivered to the North Carolina Department of Motor Vehicles on or about October 31, 2019, approximately 50 days after execution of the loan agreement and 31 days after the Debtor filed her Chapter 13 petition.

8. The lien in favor of Defendant was perfected in accordance with North Carolina law on October 31, 2019, and a copy of the ELT printout reflecting such perfection date is attached hereto as “Exhibit B” and incorporated herein.

9. The perfection of the security interest in the automobile was a transfer of property of the estate made after the commencement of the Chapter 13 case and was not authorized under Title 11 of the United States Bankruptcy Code nor by the Court.

10. The transfer and perfection of the security interest in the automobile is avoidable by the Trustee pursuant to 11 U.S.C. §549(a).

WHEREFORE the Plaintiff prays the Court that:

1. The lien of Defendant on the automobile be avoided pursuant to 11 U.S.C. §549(a) and the claim of Defendant be allowed as a non-priority unsecured claim in the filed amount of \$14,653.68.
2. The certificate of title to the automobile be forwarded from Defendant, releasing its lien, to the Standing Trustee, and be retained by the Trustee until successful completion of this Plan;
3. In the event that the Debtor fails to successfully complete the Plan, the Standing Trustee shall deliver the certificate of title to a Chapter 7 Trustee if this case is converted to Chapter 7, or upon dismissal of the case, return the certificate of title to Defendant; and
4. For such further relief as the Court may deem just and proper.

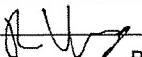
This the 20th day of February, 2020.

/s/ Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
State Bar No: 23266
3518 Westgate Drive, Suite 400
Durham, N.C. 27707
Telephone: (919) 688-8065

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Retail Purchase Agreement – North Carolina –

BUYER		Reina Alina Vizoso Mejia		
ADDRESS LINE 1		463 PANORAMA PARK PL		
ADDRESS LINE 2				
CITY, STATE, ZIP		CARY NC 27519		
PHONE(S)		RES. [REDACTED]	BUS.	
VEHICLE BEING PURCHASED				
Year 2014	Make Chevrolet	Model Cruze	Body Sedan	
Lic. Plate #	License Tab #	Expires	Mileage 40680	Color Gray
VIN # 1G1PC5SB7E7295137				
<p>Dealership provides an express limited warranty. Buyer has a copy of the limited warranty agreement. No other express or implied warranties are made by the Dealership and there will be no implied warranties of merchantability or fitness for a particular purpose unless required by applicable law. Seller does not have to make any repairs on this vehicle, except as required under the limited warranty and applicable state law. Buyer(s) may also have other rights that vary from state to state.</p> <p>Buyer(s) ("you") and Dealership ("we") agree that this Retail Purchase Agreement (this "Agreement") is governed by federal law and the law of the state of the Dealership Address listed above. We are agreeing to sell to you and you are agreeing to buy from us the Vehicle at our licensed dealership location shown above, subject to the terms and conditions of this Agreement. We agree to transfer to you and you agree to accept title and ownership of the Vehicle in the state of the Dealership Address listed above. When we transfer title and ownership of the Vehicle to you, you may take delivery of the Vehicle from us at our licensed dealership location shown above or you may make arrangements with us to have the Vehicle transported to another mutually agreed-upon location for your pick-up.</p>				
TRADE IN VEHICLE #1				
Year 2016	Make Volkswagen	Model Tiguan	Body	
Lic. Plate #	License Tab #	Expires	Mileage 39108	Color WHITE
VIN # WVGBV7AX1GW593563				
TRADE IN VEHICLE #2				
Year N/A	Make N/A	Model N/A	Body N/A	
Lic. Plate # N/A	License Tab #	Expires	Mileage N/A	Color N/A
VIN # N/A  Buyer's Initials _____				

Date 09/11/19 Phone [REDACTED]
 Dealership CARVANA, LLC
 Address 1631 NAVAHO DR
 City, State, Zip RALEIGH NC 27609-7532
 Stock Number [REDACTED]

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

LA INFORMACION QUE VE ADHERIDA EN LA VENTANILLA FORMA PARTE DE ESTE CONTRATO. LA INFORMACION CONTENIDA EN ELLA PREVALECE POR SOBRE TODA OTRA DISPOSICION INCLUIDA EN EL CONTRATO DE COMPROVENTA.

1 Selling price	\$13,100.00
2 Sales Tax	\$0.00
3a NC Registration Fee	\$36.00
3b Temporary Plate Fee	\$1.00
3c County Registration Fee	\$15.00
3d Title Fee	\$52.00
4 Vehicle Protection	\$1,250.00
5 Gap Coverage	\$695.00
6 Subtotal (Selling Price + Delivery Fee + Fees + Taxes)	\$15,149.00
7 Trade-in Allowance	\$13,959.00
8 Estimated Pay-off	\$13,825.00
9 Net Trade Allowance (Allowance - Payoff) <small>(If negative, enter \$0 here and enter amount on Trade-In Balance Line)</small>	\$134.00
10 Trade-In Balance <small>(If applicable, this is the negative equity amount from your trade-in)</small>	\$0.00
11 Cash Down Payment	\$166.00
12 Total Down Payment (Cash Down Payment + Net Trade Allowance)	\$300.00
13 Balance Due (Subtotal - Total Down Payment)	\$14,849.00
TOTAL BALANCE DUE (BALANCE DUE + TRADE-IN BALANCE)	\$14,849.00

FINANCE CHARGE

The dollar amount the credit will cost you

\$ 11,697.04

If financed, interest charged on the principal amount. See Retail Installment Contract for more information.

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by the designated custodian

NOTICE TO THE BUYER(S): THE PAYOFF BALANCE REFERRED TO IN ESTIMATED PAY-OFF AND THE FEES REFERRED TO IN THE ABOVE LINE ITEMS ARE ESTIMATES, AT THE TIME THE BALANCES AND FEES ARE VERIFIED AND CONTRACT DETERMINED, APPROPRIATE ADJUSTMENTS, IF NECESSARY, WILL BE MADE. ANY DIFFERENCE IN THE PAYOFF AMOUNT IS THE RESPONSIBILITY OF THE BUYER(S).

Carvana Vehicle Return Program

We will give you the ability to return the Vehicle to Carvana and terminate this retail purchase agreement and any retail installment contract executed in connection herewith so long as:

1. You have not returned, exchanged, or swapped more than two (2) prior Vehicles to Carvana in connection with any Retail Purchase Agreements or Retail Installment Contracts associated with this transaction.
 - i. If you have returned, exchanged, or swapped two (2) prior Vehicles in connection with this transaction, you will be given a one-time opportunity to decline or accept the third and final Vehicle either during the delivery or pick-up appointment unless otherwise approved by Carvana.
2. You alert Carvana by phone, text, email, or chat prior to 8pm EST on the 7th calendar day after you take delivery of the Vehicle. The day your Vehicle is delivered, regardless of delivery time, will count as the first day of your seven (7) day test own;
3. You return the Vehicle in one of two ways:
 - i. Within a Carvana service area: you make the Vehicle available for pick up by a Carvana representative at a predetermined time and location the following business day. Cost of pickup will be paid by Carvana. Service area is designated by zip code and subject to change without prior notice.
 - ii. Outside of a Carvana service area: Carvana will arrange for transport of the Vehicle. The cost will be paid by you. Service area is designated by zip code and subject to change without prior notice.
4. The Vehicle is free of all liens and encumbrances other than the lien created in your favor by any applicable retail installment contract executed between you and Carvana;
5. The Vehicle is in the same condition you received it except for reasonable wear and tear (evidence of smoking in the Vehicle during the 7 Day Test Own is not considered reasonable wear and tear) and any mechanical problem that becomes evident after delivery that was not caused by you;
6. You have not driven it more than 400 miles;
7. The Vehicle is without damage or having been in an accident that occurred after you took delivery of the Vehicle;
8. If the Vehicle is driven more than 400 miles, at Carvana's election you will pay \$1.00 per mile for each mile the Vehicle was driven over 400 miles. If you return your Vehicle and had traded in a vehicle to us, we will return your trade to you only after you have paid all fees required for the return of the Vehicle. Required fees may not be paid by personal check. Required fees will be deducted from your down payment refund. If you paid your down payment via ACH transaction, we will pay you and/or return your trade in by the earlier of (a) when you provide evidence that the ACH transaction was cleared, or (b) 15 business days after your purchase of the Vehicle. So long as you meet all conditions for return of the Vehicle outlined above, Carvana will not report this account to the credit bureaus.
9. Any Trade-In vehicles with current liens which are involved in this transaction will be paid off once sale is complete and after the test own period ends. You should continue to make payments on liens if payment is due within your test own period. The lien holder of the Trade-In vehicle will reimburse you for any over-payment after the transaction is complete.

Trade in Representation and Warranty: You represent and warrant that the trade-in described in the Buyer's order/Purchase Agreement, if any, has not been misrepresented and air pollution equipment is on the trade-in and is working, you will provide to us a Certificate of Title (or documents that allow us to obtain it), free of any lien(s) or encumbrance(s), (i.e. titling issues, child support or amounts due to government titling or registration agency,) and you have the right to sell the trade-in.

General: At time of delivery, or at any time during your 7 Day Test Own period, you may reject your vehicle and terminate your vehicle financing and purchase for any reason.

In certain states, dealers may not place any insignia that advertises the dealer's name on a vehicle unless the Buyer consents thereto in the purchase contract for such vehicle. Unless Buyer notifies dealer otherwise in writing, Buyer hereby expressly consents to the placement of Carvana's name on the vehicle's license plate cover. Buyer expressly waives any compensation for the placement of dealer's name on the vehicle.

Default: You will be in default if any of the following occurs (except as may be prohibited by law): 1. You gave us false or misleading information on carvana.com or on the telephone, via email or text message, in person, or any other communication medium in connection with the purchase of the Vehicle relating to this Agreement; 2. If we cannot verify any information that you have provided us; 3. If we discover a material adverse change in any information you provided us during our review process; 4. If you do not cooperate in the verification and review process described below; 5. You fail to keep any other agreement or promise you made in this Agreement and/or any retail installment contract executed in connection herewith.

Assignment: You may not assign your rights under this Agreement and/or any retail installment contract executed in connection herewith without our permission.

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After-sale Review and Verification Process: The Vehicle sold to you is subject to an after-sale review and verification of the information you have provided to us. You agree to cooperate with the after-sale review and verification process.

Limitation on Damages: Unless prohibited by law, you shall not be entitled to recover from us any consequential, incidental or punitive damages, damages to property or damages for loss of use, loss of time, loss of profits, or income or any other similar damages. We are not liable for any failure or delay in delivering the vehicle to you if it is beyond our control, not our fault or we are not negligent.

References: To the extent you are financing your purchase with us, we may contact your employer or your references to verify the information you provided to us in connection with this Agreement.

Odometer (mileage): Each of your and our representations regarding odometer readings are subject to information provided by others, including government agencies. We each understand that this information is not always accurate. As permitted by applicable law, neither us is responsible for any inaccuracies in this information to the extent it is not the party's fault.

Disclosure on Airbags: We disclaim any knowledge of, and make no representation or warranty as to the condition or operability of the airbag(s) on the vehicle unless otherwise disclosed to you on the Carfax Vehicle History Report. You acknowledge that we have not made any representations, oral or in writing, as to the condition or operability of the airbag(s), and you accept the vehicle without representation or warranty from us. You further acknowledge that you had the opportunity to have the airbag(s) checked by someone of your choice prior to the expiration of your 7 Day Test Own Period.

Liability Insurance: You understand that state law requires you to purchase and maintain liability insurance. We do not provide liability insurance for you and it is not included in your Agreement. Your choice of insurance providers will not affect our decision to sell you the vehicle.

Record Retention: You agree that we may maintain documents and records related to the vehicle and the Agreement electronically, including, but not limited to, documents and record images, and that we may dispose of original documents. You agree that a copy of any such electronic records may be used and shall be deemed to be the same as an original in any arbitration, judicial, or non-judicial or regulatory proceeding related to the vehicle.

Arbitration Agreement: The arbitration agreement entered into between you and Dealer is incorporated by reference into and is part of this Agreement.

NOTICE: Carvana, LLC allows you to finance applicable sales/use taxes assessed on ancillary products (vehicle service contract, GPS, GAP Coverage). Whether you finance your vehicle purchase or pay cash, if your vehicle is registered in the state where you purchased your vehicle, Carvana will remit the applicable sales/use tax on ancillary products to that state on your behalf. Unless required by state law, if your vehicle is registered in a state that is not the state where you purchased the vehicle, Carvana will not collect or remit to the state of vehicle registration any applicable sales/use tax on ancillary products on your behalf unless you live in Kansas, Louisiana, or Pennsylvania.

Buyer acknowledges receipt of a copy of this Agreement. This agreement supersedes any oral agreements or understandings. The agreement cannot be modified except by a written agreement signed by all of the parties. This agreement is not binding until accepted by an authorized representative of Carvana.

Buyer _____

Reina Alina Vizoso Mejia

Accepted By _____

Carvana



CARVANA

1930 W. Rio Salado Pkwy.
Tempe, AZ 85281
Office: 602.852.6604
Fax: 602.667.2581
Email: legal@carvana.com

Date: November 15,
2019

To Whom It May Concern,

This letter shall serve as formal acknowledgement that Bridgecrest is a valid loan servicer for Carvana loans.

If you have any questions, please contact me at the email address or phone number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Breaux".

Name: Paul Breaux

Title: General Counsel, Vice President, and Secretary

PROOF OF CLAIM CALCULATIONS

AS OF 9/30/2019

Principal: \$14,584.96

Interest: \$68.72

Pre-Petition Late fees: \$0.00

Pre-Petition Attorney Fees and Court Costs: \$

Repossession Charges: \$0.00

TOTAL: \$14,653.68

* Interest, fees and charges continue to accrue per the Note terms.

11/15/2019

ELT Printout without Account Information



Collateral Management Services
9750 Goethe Road | Sacramento, CA 95827
www.dealertrack.com

Carvana LLC

Lien and Title Information

Lienholder

ELT Lien ID 48411290
Lienholder CARVANA LLC
Lienholder Address PO BOX 29002
PHOENIX, AZ 850389002

Lien Release Date

Vehicle and Titling Information

VIN	1G1PC5SB7E7295137	Issuance Date	10/31/2019
Title Number	425319280372H	Received Date	10/31/2019
Title State	NC	ELT/Paper	ELECTRONIC
Year	2014	Odometer Reading	0
Make	CHEV	Branding	
Model			
Owner 1	REINA ALINA VIZOZO MEJIA		
Owner 2			
Owner Address	463 PANORAMA PARK PL CARY, NC 275190857		

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